

Berkower had previously been named a Defendant in this matter. Plaintiffs' First Amended Complaint alleged sex claims against it- three claims under the Racketeer Influenced and Corrupt Organizations Act (RICO) and three claims under Wyoming state law. Berkower moved for Judgment on the Pleadings as to all six claims.

On November 20, 2023, this Court entered an order granting Berkower's motion as to the three RICO claims, and dismissed Berkower from the entirety of the action based on a lack of personal jurisdiction. Further, this Court denied Axtra's request to amend its complaint. (ECF 87)

Thereafter, Berkower filed a motion to certify the order as final and direct entry of a partial final judgment. As to that motion, this Court issued an order dated January 25, 2024, denying the motion. (ECF 94) In the January 25 order, the Court acknowledged that the prior order disposed of all causes of action alleged against Berkower, and further agreed that the order (ECF 87) was a final disposition of all claims against Berkower for purposes of Rule 54(b) because it disposed of all claims alleged against Berkower. Since that ruling, Plaintiffs have taken no action as to Berkower or the two orders referenced above.

Despite this history, counsel for the Plaintiffs sent an email to the parties on April 4, 2024, advising that they intended to file a second amended complaint to name additional Defendants, but that no new causes of action would be asserted. Thereafter, counsel sent around a draft of the amended complaint they intended to file.

Upon reviewing the second amended complaint, counsel for Berkower determined that all prior claims against Berkower remained in the pleading, and that Berkower remained listed as a Defendant. Counsel for Berkower sent an email to counsel for Plaintiffs attempting to clarify the issue. In response, counsel for Plaintiffs responded that "our understanding of the Court's Order

Denying Berkower's Motion for Entry of Partial Final Judgment (ECF 94) is that Berkower is still a Defendant in the case." See email exchange attached as Exhibit A to this objection.

On April 8, this Court requested Defendants file a status report by close of business on April 10 whether they intend to file an objection to the motion. Berkower objects to the motion. Plaintiffs' motion to file a second amended complaint should be denied. Berkower does not remain a Defendant in the case, and no good faith argument can be made that it is based on the orders issued in ECF 87 and ECF 94. In the alternative, Berkower requests that this Court order that any amended complaint filed reflect the fact that Berkower has been dismissed from all claims in an order that is final.

CONCLUSION

For the foregoing reasons, this Court should deny Plaintiffs' motion to file a second amended complaint, or in the alternative, require that the complaint be amended to reflect that all claims against Berkower have been dismissed by a final order.

Dated this 10th day of April 2024.

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CERTIFICATE OF SERVICE

This is to certify the foregoing **Objection of Berkower, LLC to Plaintiffs' Motion to File Second Amended Complaint** was served on all counsel of record this 10th day of April 2024, by filing electronically with the Court using the CM/ECF system.

/s/ Andrew F. Sears

Andrew F. Sears